IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 459 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAXMIDAS RAVJIBHAI PATEL

Versus

DEEP PLASTIC INDUSTRIES

Appearance:

MR BS PATEL for Appellant

MRS KETTY A MEHTA for Respondents No. 1-5

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 22/01/2002

ORAL JUDGEMENT

1. Heard Mr.B.S.Patel, learned advocate for the appellant and Ms.K.A.Mehta, learned advocate for the respondents.

2. Mr.B.S. Patel, learned advocate for the appellant makes a statement at Bar that the appellant original defendant is unable to furnish security with surety as per impugned order and, therefore, the order with regard to attachment before judgment be passed. The

learned advocates for both the parties jointly submit to this Court that this appeal be disposed of by giving suitable directions to the parties and the trial Court without assigning reasons.

2A. I have considered the arguments advanced by both the parties. I have gone through the impugned order. This Court is of the view that looking to the statement made by Mr.B.S.Patel, learned advocate for the appellant that the property described in sub-para-1 of para-1 of the application Exh.5 in Special Civil Suit No.332 of 2000 be attached before the judgment during the pendency of Special Civil Suit No.332 of 2000, following order is required to be passed. Accordingly, this Court orders.

3. An immovable property bearing City Survey Ward No.3, City Survey No.4447, Municipal House No.786, admeasuring 41.44 sq.yrd. described in application Exh.5 is ordered to be attached under Order 38, Rules 5 and 6 of the Civil Procedure Code, during the pendency of Special Civil Suit No.332 of 2000. For the properties described in sub-paras 2 and 3 of the application Exh.5, the respondents i.e. original plaintiffs are at liberty, to move the trial Court, afresh.

4. In view of what is stated hereinabove, an impugned order dated 5/11/2001 passed below Exh.5 in Special Civil Suit No.332 of 2000, which is pending on the file of learned 3rd Joint Civil Judge (S.D.), Bharuch now does not survive.

5. In view of the directions given hereinabove, this appeal stands disposed of accordingly. No order as to costs.

(H.H.Mehta,J.)

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